COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

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Investigation by the Department on its own)

Motion as to the propriety of the rates and)

charges set forth in M.D.T.E No. 17, filed with)

the Department on May 5, 2000 to become) D.T.E. 98-57, Phase III

effective June 4 and June 6, 2000 by New)

England Telephone and Telegraph Company)

d/b/a Bell Atlantic - Massachusetts)

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VERIZON MASSACHUSETTS'MOTION FOR CONFIDENTIAL TREATMENT

Verizon Massachusetts ("Verizon MA") hereby requests that the Department grant this Motion requesting confidential treatment of data provided by Verizon MA in response to the Department ("DTE") Record Request No. 12. As shown below, that data qualifies as a "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and, therefore, is entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret,"(1) Massachusetts courts have considered the following:

(1) the extent to which the information is known outside of the business;

(2) the extent to which it is known by employees and others involved in the business;

(3) the extent of measures taken by the employer to guard the secrecy of the information;

(4) the value of the information to the employer and its competitors;

(5) the amount of effort or money expended by the employer in developing the information; and

(6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972).

The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has "the right to keep the work which it had done, or paid for doing, to itself." Similarly, courts in other jurisdictions have found that "[a] trade secret which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

Based on the above criteria, the following record request information requests should be afforded confidential treatment by the Department. Verizon MA is willing to provide the data in those requests subject to reasonable terms of the standard protective agreement, which properly limit the use of the data to the preparation and conduct of this proceeding. That restriction is intended to prevent actual and potential competitors from unduly and unfairly benefiting from access to that data by using it to their commercial and competitive advantage.

No party has filed any objection to Verizon MA's provision of the above information request pursuant to a Protective Agreement. Likewise, no compelling need exists for public disclosure of those proprietary responses for the Department to analyze and decide the issues addressed in this proceeding. Accordingly, Verizon MA's interest in preserving the confidentiality of the data should far outweigh any interest in public disclosure, which would only provide carriers with unbridled access to highly sensitive information by placing it in the public domain.

DTE-RR-12

DTE-RR-12 contains an internal business analysis that examines the implementation of a new mechanized system for maintaining engineering records primarily for the former Bell Atlantic-South area. It also contains some preliminary data concerning the former NYNEX region prior to its merger with Bell Atlantic. As noted in the reply to that request, the document is incomplete, and it was never revised and released in final form. Moreover, the preliminary recommendations contained in that document were never implemented.

The document requested in DTE-RR-12 is highly competitively sensitive because of the considerable financial, operational and technical network information it provides on a state-specific level. Based on past practice by state regulatory commissions in the former Bell Atlantic South area, it is virtually a certainty that this document would be afforded proprietary treatment because of the detailed level of preliminary information on a range of internal business issues and financial cost models involving, inter alia, force reductions, deployment of resources, and equipment deployment. Indeed, recently in similar New York proceeding, this document was filed subject to confidential treatment.

Accordingly, this document would qualify as "trade secret" or "confidential, competitively sensitive proprietary information" under Massachusetts law because it provides information to competitors that is: (1) not known outside of the Company and not readily obtained from other non-Company sources; (2) cannot be easily duplicated by competitors; and (3) may give some unfair business or marketing advantage to competitors. Verizon MA has a legitimate need to maintain the confidentiality of that data which far outweighs any benefit in obtaining public disclosure of the material. Thus, the document should be considered Verizon MA's "private property" and a "trade secret" and, therefore, not subject to public disclosure.

CONCLUSION

WHEREFORE, Verizon MA respectfully requests that the Department grant this Motion to afford confidential treatment to Verizon MA's Reply to DTE-RR-12 for the above reasons.

Respectfully submitted,

VERIZON MASSACHUSETTS

By Its Attorney,

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1 Under Massachusetts law, a trade secret is "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court ("SJC"), quoting from the Restatement of Torts, § 757, has further stated that "[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers." J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970). Massachusetts courts have frequently indicated that "a trade secret need not be a patentable invention." Jet Spray Cooler, Inc. v. Crampton, 385 N.E.2d 1349, 1355 (1979).